



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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FEBRUARY 22, 2016

Regular meeting of the City Council held on Monday, FEBRUARY 22, 2016 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juairé, Oram, Ossing, Robey, Delano, Doucette, Elder, Tunnera, Irish and Landers. Meeting adjourned at 9:27 PM.

ORDERED: That the Minutes of the City Council meeting FEBRUARY 8, 2016, **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Petition from National Grid and Verizon New England, Inc. to relocate existing P12 and install new guy P12-84, and relocating P15, P18, P27, P28, P30 & P31 to accommodate road widening project on West Hill Rd., Order No. 16-1006427, X14-1005672A, all were heard who wish to be heard, hearing recessed at 8:18 PM; adopted.

**Councilors Present: Delano, Doucette, Elder, Tunnera, Clancy, Landers, Juairé, Oram, Ossing, & Robey.
Councilor Irish recused.**

ORDERED: It is moved, in conformance with the provisions of section 21(a)(3) of Chapter 30A of the General Laws of the Commonwealth, that the Marlborough City Council conduct an executive session for the purpose of discussing litigation strategy in a pending lawsuit over a contract dispute involving a property off Boston Post Road East, as an open meeting may have a detrimental effect on the litigating position of the City of Marlborough, and the chair hereby declares that an open meeting may have that effect.

It is further moved and stated that the Marlborough City Council will re-convene in open session after the executive session, **APPROVED**; adopted.

Yea: 11-Nay: 0

Yea – Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey

ORDERED: That the Various Mid-Year Transfer requests as noted in the attached communication and on the assorted spreadsheets, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:	Police						FY:	2016	
		FROM ACCOUNT:				TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$1,376,994	\$40,000.00	12100001	50420	Police Officers	\$40,000.00	12100003	51310	Regular Overtime	\$11,034
	Reason:	Surplus due to vacancies and long term injuries				Deficit due to vacancies and injuries			
\$16,243	\$6,000.00	12100003	51120	Crossing Guards	\$6,000	12100003	51195	Detention Attendant	\$924
	Reason:	Surplus due to vacancy				Higher than anticipated use of police matrons			
\$18,922	\$8,000.00	12100003	51920	Sick Leave Buy Back	\$8,000	12100003	51319	Cell Watch Overtime	\$0
	Reason:	Fewer officers buying back annual sick time				Large number of at risk detainees			
\$18,922	\$5,000.00	12100003	51920	Sick Leave Buy Back	\$5,000.00	12100006	52560	Vehicle Repair	\$9,282
	Reason:	Fewer officers buying back annual sick time				Higher than expected repairs to a few cruisers			
\$96,160	\$4,000.00	12100003	51490	Holiday	\$4,000	12100006	51975	Initial Equipment Issue	\$2,889
	Reason:	Fewer officers working on some holidays				New dispatcher and new police officer			
	\$63,000.00	Total			\$63,000.00	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:	Police						FY:	2016	
		FROM ACCOUNT:				TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$96,160	\$2,000.00	12100003	51490	Holiday	\$2,000.00	12100006	55882	Prisoner Meals	\$1,631
	\$2,000.00	Total			\$2,000.00	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
	DEPT:	FIRE					FISCAL YEAR:	2016		
		FROM ACCOUNT:					TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$1,586,135.62	\$16,380.63	12200001	50450	FIREFIGHTER	\$16,380.63	12200003	51300	OVERTIME	\$70,697.20	
	Reason:	Transfer is available due to 111F payments								
\$126,424.91	\$6,156.42	12200001	50800	FIRE CAPTAIN	\$6,156.42	12200003	51300	OVERTIME	\$70,697.20	
	Reason:	Transfer is available due to 111F payments								
\$222,943.37	\$780.24	12200001	50810	FIRE LIEUTENANT	\$780.24	12200003	51300	OVERTIME	\$70,697.20	
	Reason:	Transfer is available due to 111F payments								
\$1,586,135.62	\$100,000.00	12200001	50450	FIREFIGHTER	\$100,000.00	12200003	51300	OVERTIME	\$70,697.20	
	Reason:	Transfer is available due to Retirements and vacant positions								
	\$123,317.29	Total			\$123,317.29	Total				

CITY OF MARLBOROUGH BUDGET TRANSFERS --								
DEPT:	Department of Public Works				FISCAL YEAR:	2016		
	FROM ACCOUNT:				TO ACCOUNT:			
Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$89,555	14001503	50740	Equipment Operators	\$10,000	14001306	55400	Sidewalk Maintenance	\$0
Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16			
				\$10,000	14001306	55440	Drain Maintenance	\$8,740
					Anticipated cost to cover remaining FY 16			
				\$8,255	14001501	50690	Foreman	\$112,142
					Anticipated cost to cover remaining FY 16			
				\$22,000	14001503	51240	Temporary Part-Time	\$10,325
					Anticipated cost to cover remaining FY 16			
				\$20,000	14001503	51310	Overtime-Regular	\$800
					Anticipated cost to cover remaining FY 16			
				\$300	14001503	51990	Meal Allowances	\$0
					Anticipated cost to cover remaining FY 16			
				\$15,000	14001504	53140	Contract Services	\$2,399
					Anticipated cost to cover remaining FY 16			
				\$3,000	14001504	53810	Insect & Pest Control	\$0
					Anticipated cost to cover remaining FY 16			
				\$1,000	14001506	52500	Rep/Maint Equipment	\$225
					Anticipated cost to cover remaining FY 16			
\$89,555	Total			\$89,555	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT: Department of Public Works					FISCAL YEAR: 2016			
	FROM ACCOUNT:					TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$343,541	\$14,860	14001303	50740	Equipment Operators	\$860	14001303	50790	Dispatch	\$19,950
	Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16			
					\$6,000	14001303	51240	Temporary Part-time	\$0
						Anticipated cost to cover remaining FY 16			
					\$8,000	14001303	51310	Overtime-Regular	\$2,594
						Anticipated cost to cover remaining FY 16			
\$137,297	\$60,000	14001406	54830	Fuel & Luricants	\$60,000	14001406	54810	Rep/Maint. Supplies	\$37,769
	Reason:	Money available due to drop in fuel prices				Anticipated cost to cover remaining FY 16			
\$405,150	\$41,700	14001503	50740	Equipment Operators	\$1,700	14001303	51990	Meal Allowances	\$0
	Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16			
					\$10,000	14001304	53108	Catch Basin Cleaning	\$0
						Anticipated cost to cover remaining FY 16			
					\$20,000	14001304	53140	Contract Services	\$16,243
						Anticipated cost to cover remaining FY 16			
					\$10,000	14001305	55310	Highway Constr. Materials	\$20,492
						Anticipated cost to cover remaining FY 16			
	\$116,560	Total			\$116,560	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
	DEPT:	Department of Public Works				FISCAL YEAR:	2016			
		FROM ACCOUNT:				TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$405,149	\$7,000	14001503	50740	Equipment Operators	\$7,000	14001506	54640	Park Maintenance	\$32,470	
	Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16				
\$924	\$924	60081003	51920	Sick Leave Buy Back	\$924	60081003	51470	Interim Foreman	\$179	
	Reason:	Money available				Anticipated cost to cover remaining FY 16				
\$132,817	\$30,000	61090001	50690	Foreman	\$6,000	61090003	51240	Temporary Part-Time	\$3,610	
	Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16				
					\$8,000	61090003	51470	Interim Foreman	\$0	
						Anticipated cost to cover remaining FY 16				
					\$16,000	61090006	55750	Water Service Const	\$1,841	
						Anticipated cost to cover remaining FY 16				
\$296,506	\$20,000	61090001	50740	Equipment Operators	\$20,000	61090006	55710	Water Maintenance	\$4,974	
	Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16				
\$2,382	\$2,382	61090003	51920	Sick Leave Buy Back	\$2,382	61090006	55710	Water Maintenance	\$4,974	
	Reason:	Money available due to vacancy				Anticipated cost to cover remaining FY 16				
\$5,520	\$1,000	60085005	55014	Lab/Testing Supplies	\$1,000	60085003	51470	Interim Foreman	\$198	
	Reason:	Money available				Anticipated cost to cover remaining FY 16				
	\$61,306	Total			\$61,306	Total				

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		Department of Public Works				FISCAL YEAR:		2016		
		FROM ACCOUNT:				TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$48,179	\$1,691	14001101	50700	Grade 2 Engineering	\$1,691	14001103	51240	Temporary Part-time	\$4,075	
	Reason:	Unpaid leave				Anticipated cost to cover remaining FY 16				
\$4,400	\$4,400	14001103	51440	Educational Incentive	\$954	14001103	51240	Temporary Part-time	\$4,075	
	Reason:	Tuition benefit is unused				Anticipated cost to cover remaining FY 16				
					\$3,446	14001104	53180	Prof & Tech Service	\$15,513	
						Anticipated cost to cover remaining FY 16				
\$19,092	\$19,092	61090007	58770	Equipment/Tool Replacement	\$19,092	61090006	52320	Water-MWRA	\$1,000	
	Reason:	Milham WTP under construction				Anticipated cost to cover remaining FY 16				
\$187,603	\$187,603	61090006	55700	Water Treatment Plant	\$187,603	61090006	52320	Water-MWRA	\$1,000	
	Reason:	Milham WTP under construction				Anticipated cost to cover remaining FY 16				

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		Legal				FISCAL YEAR:		2016		
		FROM ACCOUNT:				TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$23,175.14	\$5,000.00	11510006	57600	Claims & Judgements	\$2,500.00	11510005	54220	Office Supplies/Expense	\$1,509.25	
	Reason:	Expenses running lower than anticipated				To cover anticipated costs through year end				
					\$2,500.00	11510006	53880	Registry of Deeds	\$50.00	
						To cover anticipated costs through year end				
	\$5,000.00	Total			\$5,000.00	Total				

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		Various				FISCAL YEAR:		2016		
FROM ACCOUNT:						TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$2,092,330.17	\$215,891.00	13900006	53280	Assabet Regional Voc School	\$12,000.00	12410001	50970	Asst Wiring Inspector	\$1,575.00	
		Reason: Assessment lowered due to Local Aid increase				To cover upcoming inspections due to large projects				
\$105,697.00	\$99,697.00	11940006	51770	Retirement	\$5,000.00	12410001	50960	Asst Plumbing Inspector	\$480.00	
		Reason: Funds available due to one 7/1/2015 payment				To cover upcoming inspections due to large projects				
\$43,683.00	\$43,683.00	13100003	51770	Retirement	\$275,000.00	60080004	53110	Legal Services - Sewer	\$1,000.00	
		Reason: Funds available due to one 7/1/2015 payment				To cover various legal services thru year end				
\$417,530.00	\$82,729.00	60075206	59050	Interest Expense - Sewer	\$250,000.00	11920006	52120	Electricity	\$541,099.00	
		Reason: Funds available				To restore cut funds needed for remaining FY16				
\$4,896,252.00	\$100,000.00	10000	35900	Undesignated Fund						
		Reason:								
	\$542,000.00	Total			\$542,000.00	Total				

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Commonwealth of MA, Executive Office of Public Safety and Security grant awarded to the Police Department in the amount of \$99,805.00 to offset personnel costs in the Public Safety Dispatching Center and to purchase three computer tablets for updated, computerized Emergency Medical Dispatch protocol guidelines at each answering point in the Dispatch Center; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Commonwealth of MA, Division of Local Services grant awarded to the City in the amount of \$30,000.00 as the City signed a Community Compact with Governor Baker’s office; adopted.

ORDERED: That the City Council does hereby **APPROVES** the extension of sewer and water mains on Sudbury Street and the surrounding area; adopted.

Councilor Delano recused.

President Clancy orally reported approval via a hand vote of 10-0.

ORDERED: That the Communication from the Mayor re: Assistant Building Commissioner position refer as follows:

Chapter 7, §76-Ordinance pertinent to Building Department, refer to LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE; adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 7, ENTITLED “BUILDING DEPARTMENT,” OF ARTICLE XIV, AS FOLLOWS:

A. Chapter 7 is hereby amended by deleting section 7-76 in its entirety and replacing it with the following:

§ 7-76 Assistant Building Commissioner; Appointment of Local Inspectors.

A. The Mayor may employ an Assistant Building Commissioner who shall assist in the performance of the duties of the Building Commissioner. The Assistant Building Commissioner shall be certified as a Building Commissioner or a Local Inspector, and shall meet the requirements and qualifications established by the Massachusetts Board of Building Regulations and Standards as defined by Section 3 of Chapter 143 of the Massachusetts General Laws.

B. The Mayor shall employ local inspectors, as necessary, to support the mission and duties of the Building Department. Local inspectors shall be under the direction of the Building Commissioner and the Assistant Building Commissioner. Local inspectors shall meet the requirements and qualifications established by the Massachusetts Board of Building Regulations and Standards as defined by Section 3 of Chapter 143 of the Massachusetts General Laws.

Chapter 125, §6-Ordinance pertinent to Compensation Schedule, refer to FINANCE COMMITTEE; adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, ACTING UPON A RECOMMENDATION OF THE MAYOR, THAT THE CODE OF THE CITY OF MARLBOROUGH (HEREINAFTER, THE “CITY CODE”), AS AMENDED, BE FURTHER AMENDED BY AMENDING IN CHAPTER 125, ENTITLED “PERSONNEL,” SECTION 6, ENTITLED “COMPENSATION SCHEDULE,” AS FOLLOWS:

Position	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7 / Max
	<i>Start</i>	<i>6 months of service</i>	<i>1 year of service</i>	<i>2 yrs. of service</i>	<i>3 yrs. of service</i>	<i>4 yrs. of service</i>	<i>5 yrs. of service</i>
Assistant Building Commissioner	\$70,000.00	\$71,400.00	\$72,828.00	\$74,284.56	\$75,770.25	\$77,285.66	\$78,831.37

ORDERED: That the Communication from Council President Clancy re: Proposed Salary Ordinance: Election Stipend for Pollworkers as follows, refer to **FINANCE COMMITTEE**; adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING SECTION 125-6 OF CHAPTER 125, ENTITLED “COMPENSATION SCHEDULE,” SAID AMENDMENT TO BE EFFECTIVE AS OF JULY 1, 2017, AS FOLLOWS:

<u>Stipend Position</u>	<u>Stipend Per Election</u>
Election Wardens	\$250.00
Election Clerks	\$200.00
Election Inspectors/Checkers (per approximate 6-hour shift)	\$60.00
Constables at Polls	\$18.75 per hour

ORDERED: That the City Clerk be and is herewith directed to have proper notices issued notifying the VOTERS of the City of Marlborough that the **PRESIDENTIAL PRIMARY ELECTION** will be held in the polling locations as noted below on **TUESDAY, MARCH 1, 2016** as follows: President, State Committee Man, State Committee Woman for the Middlesex & Worcester Senate District and Ward Committee members, **FILE**; adopted.

THE POLLS WILL OPEN AT 7:00 A.M. AND WILL CLOSE AT 8:00 P.M.

POLLING LOCATIONS ARE AS FOLLOWS:

WARD ONE: Precinct 1 and 2	Francis J. Kane School, 520 Farm Road
WARD TWO: Precinct 1 and 2	Francis J. Kane School, 520 Farm Road
WARD THREE: Precinct 1	Senior Center, 40 New Street
WARD THREE: Precinct 2	Raymond J. Richer School, 80 Foley Road
WARD FOUR: Precinct 1 and 2	Senior Center, 40 New Street
WARD FIVE: Precinct 1 and 2	Senior Center, 40 New Street
WARD SIX: Precinct 1 and 2	1LT Charles W. Whitcomb School, 25 Union Street, Library
WARD SEVEN: Precinct 1 and 2	Hildreth School, 85 Sawin Street

ORDERED: That the Communication from Assistant City Solicitor Cynthia Panagore Griffin re: Modification of Special Permit from 110 Pleasant LLC, to allow for 18 residential units in place of 17 residential units and 1 office unit, (Howe Shoe Factory Condominium) in proper legal form, Order No. 15/16-100639C, X-Order No. 10-1002683B & 11-1002923F, **MOVE TO ITEM 18**; adopted.

Councilor Tunnera abstained.

- ORDERED: That the Minutes, Planning Board, January 25, 2016, **FILE**; adopted.
- ORDERED: That the Minutes Public Schools, January 26, 2016, **FILE**; adopted.
- ORDERED: That the Minutes, Zoning Board of Appeals, February 2, 2016, **FILE**; adopted.
- ORDERED: That the Minutes, Board of Assessor's, January 27, 2016, **FILE**; adopted.
- ORDERED: That the Communication from Steven Toomey on behalf of Rosalio and Carmen Regalado re: Improper/Faulty Water Meter Installation, refer to **LEGAL DEPARTMENT**; adopted.
- ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.
- a. Richard Bonnell, 41 Evelina Dr., other property damage.
 - b. Noel Raphael, 80 Bolton St., #1, pothole or other road defect.
 - c. Anthony Long, 20 Kelleher St., residential mailbox claim 2(a).

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee
Tuesday February 9, 2016
In Council Chambers**

Present: Chairman Ossing; Finance Committee members Councilors Robey, Irish and Doucette (Councilor Oram was absent.) Councilors Clancy and Landers were also in attendance. The meeting convened at 7:01 PM.

1. **Order #16-1006424 – Transfer \$130,000.00 from Police Officers account to the Regular Overtime account.** The Finance Committee reviewed the Mayor's letter dated January 21, 2016 requesting the transfer of \$130,000.00 from the Police Officers Account to the Regular Overtime account in the Police Department. The Finance Committee voted 4 – 0 to approve the transfers.

The Finance Committee agreed to support suspending the rules at the February 22, 2016 City Council meeting to approve the transfer.

2. **Order #14-1006005A, 14-1006005B – Non Union Compensation Proposal and Proposed Job Title Changes.** The Finance Committee reviewed the Mayor's letters dated October 30, 2014 and November 13, 2014 involving the updating of the salaries and compensation of several Department heads and non-union positions. The Finance Committee took the following actions:

The Finance Committee voted 4 – 0 to approve the salary ordinance as amended below:

Reports of Committees cont'd:

- Change effective date for the salary schedule (Item B) to July 1, 2016.
- Delete the Fire Chief and Building Commissioner positions as these salary ordinances were approved last year.
- Change the following position titles in Item “E” back to their existing titles Chief of Staff to the Mayor to Executive Aide to the Mayor, Executive Assistant to the Mayor to the Executive Secretary to the Mayor and Executive Assistant to the City Council to City Council Research Assistant.
- The Mayor will adjust the step increases by 2% for FY16 and 2% for FY17 in the salary schedule to align with the current adjustments recently approved by the City Council.

The Finance Committee voted 4 – 0 to approve the following changes to the City Council and Mayor salaries effective January 1, 2018:

- City Council - \$10,000.00
 - Mayor - \$100,000.00
- 3. Order #14-1006005B** - The Finance Committee voted 4 – 0 to approve the order to revise the “Use of Sick Leave” section 125-27 to “not exceed the amount of \$5,000.00.”

Suspension of the Rules requested-granted

ORDERED: That the Police Department transfer request in the amount of \$130,000.00 which moves funds from Police Officers to Regular Overtime to fund overtime, **APPROVED;** adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT:	Police								FY:2016
		FROM ACCOUNT:				TO ACCOUNT:			
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$1,424,236	\$130,000.00	12100001	50420	Police Officers	\$130,000.00	12100003	51310	Regular Overtime	\$19,330
	Reason:	Surplus due to vacancies and long term injuries				Deficit due to vacancies and long term injuries			
	\$130,000.00	Total			\$130,000.00	Total			

Suspension of the Rules requested-granted

ORDERED: At a regular meeting of the Marlborough City Council held on Monday, February 22, 2016 at 8:00 PM in the City Council Chambers, City Hall, the following proposed amendment to the Code of the City of Marlborough, **“USE OF SICK LEAVE ORDINANCE”** having been read was **ORDERED ADVERTISED;** adopted.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, ACTING UPON A RECOMMENDATION OF THE MAYOR, THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

Section 125-27, entitled “Use of sick leave” is hereby amended by deleting paragraph C in its entirety and inserting in place thereof the following new paragraph C:

- C. Upon the termination of employment of a non-union employee, except where the termination is by the City for cause, or upon the death of a non-union employee, the City shall pay to said employee or said employee’s beneficiary or estate, whichever is applicable, the value of the employee’s accumulated and unused sick leave, not to exceed the amount of \$5,000.00.

Suspension of the Rules requested-granted

ORDERED: That the Communication from Attorney Falk on behalf of Bolton Granger Realty Trust, regarding Proposed Order of Relocation of Court St. Extension, refer to **URBAN AFFAIRS COMMITTEE AND PLANNING BOARD;** adopted.

ORDERED:

**DECISION ON A SECOND AMENDMENT
TO ORIGINAL SPECIAL PERMIT AND
FIRST AMENDMENT TO SPECIAL PERMIT
GRANTED TO 110 PLEASANT LLC**

**CITY COUNCIL ORDER NO. 15/16-1006395C /
X10-1002683F & X11-1002923F**

Application of:
110 Pleasant LLC
Locus:
110-118 Pleasant Street
Map 68, Parcel 462

FINDINGS OF FACT AND CONDITIONS

The City Council of the City of Marlborough hereby GRANTS the application of 110 Pleasant LLC, a Massachusetts limited liability company having a mailing address of 26 Elderwood Drive, Stoughton, MA 02072, as provided in this Decision and subject to the following Findings of Fact and Conditions.

PROCEDURAL FINDINGS OF FACT

1. 110 Pleasant LLC, a Massachusetts limited liability company having a mailing address of 26 Elderwood Drive, Stoughton, MA 02072, is referred to hereinafter as the “Applicant.”
2. Applicant is the owner of certain real estate located at 110-118 Pleasant Street, Marlborough, MA, as further described in a deed recorded at the Middlesex South District Registry of Deeds in Book 55633, Page 468 (hereinafter, the “Premises”).
3. On September 27, 2010, the City Council of the City of Marlborough voted to grant the Applicant a special permit concerning the Premises, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 55633, Page 471 (hereinafter, the “Original Special Permit”).
4. On December 5, 2011, the City Council of the City of Marlborough voted to grant the Applicant an amended special permit concerning the Premises, as further described in a document recorded at the Middlesex South District Registry of Deeds in Book 58300, Page 306 (hereinafter, the “First Amendment”).
5. On December 17, 2015, the Applicant submitted to the City Clerk of the City of Marlborough an application seeking to amend the Original Special Permit and the First Amendment under the provisions of M.G.L. c. 40A, § 9 and the Marlborough Zoning Ordinance, Article IV, § 650-12.B and Article VI, § 650-59.C(20) (hereinafter, the “Application”).

6. In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and twenty (20) copies of the existing Site Plan.

7. The existing Site Plan was certified by the Planning Department of the City of Marlborough (Building Commissioner) as having complied with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.

8. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk caused to be advertised the public hearing's date in the MetroWest Daily News and sent notice of said hearing to abutters entitled to notice under law.

9. On January 25, 2016, the City Council held a public hearing concerning the Application. The hearing was opened and closed on that date.

10. The Applicant presented testimony at the public hearing detailing the Application. All testimony made by those speaking at the public hearing have been duly considered in making this Decision.

11. The Procedural Findings of Fact specified above supplement those made in the Original Special Permit and in the First Amendment, which are expressly incorporated herein by reference.

BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING ACTIONS:

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the proposed new use of the site, and the structure as altered, will not be substantially more detrimental to the neighborhood than the continued use of the existing site and structure for manufacturing and other non-conforming uses. The visual impacts from the proposed use have been mitigated, and the traffic impacts will be no more detrimental than the possible impacts from industrial uses. In addition, the City Council finds that the proposed residential use may act as a catalyst in encouraging further growth in, and improvements to, the surrounding area.

C) The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant a Second Amendment to the Original Special Permit and the First Amendment to alter the preexisting nonconforming use of the Premises to a residential use and to alter the preexisting nonconforming structure that exists thereon, through the adaptive reuse of the structure to accommodate eighteen (18) residential housing units (the “Project”), by:

- (a) deleting Condition Number 7 and substituting there for a new Condition Number 7, as set forth below;
- (b) deleting the Condition Number 22 and substituting there for a new Condition Number 22, as set forth below;
- (c) deleting Condition Number 24 and substituting there for a new Condition Number 24, as set forth below;
- (d) inserting a new Condition Number 27, as set forth below; and
- (e) inserting a new Condition Number 28, as set forth below.

All other conditions of the Original Special Permit and the First Amendment shall continue in full force and effect, and are expressly incorporated herein by reference.

7. Limit and Type of Residential Units. The Project will contain no more than eighteen (18) residential units which will all be two-bedroom units as referenced in the modified site plans and further depicted on related architectural building permit plans.

22. Owner-Occupancy. It shall be a condition of the condominium by-laws of the Project that all residential units in the Project, consisting of a total of eighteen (18) units that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this section of the condominium by-laws, and will provide that this section may not be amended. No occupancy permit regarding the project shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium by-laws, along with the condominium master deed, have been recorded. Applicant (110 Pleasant LLC, 26 Elderwood Drive, Stoughton, MA 02072), including its successors and assigns, may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said units to tenants; provided, however, that:

- a. No said unit shall be or continue to be rented after the fifth anniversary of the date of issuance of the occupancy permit of said unit;
- b. No unit shall be rented or continue to be rented after the seventh anniversary of the date of issuance of the first occupancy permit for the site;
- c. The number of units being rented and occupied by tenants shall not exceed eighteen (18) units;
- d. An executed "rent to own" contract shall qualify the subject unit as owner-occupied, so long as transfer of title for that unit occurs within 36 months of the starting date of the rental agreement for that unit;
- e. Applicant, including its successors and assigns, shall continue to market the units as condominiums;
- f. No sign at the premises shall market any units as being for rent; however "rent to own" signs are permissible so long as they are in compliance with City's sign ordinance without variance; and
- g. No unit shall be rented to any person or persons for more than three years unless, prior to the expiration of those three years, said person or persons execute(s) a purchase and sale agreement.

The term "Applicant, its successors and assigns," as used herein and for purposes of this Condition 22 shall include Applicant, its successors and assigns, and any entity controlled by said entities, or controlled by the principal and/or principals of said entities. No entity may, at one time, own more than 10% of the units in any condominium created hereunder.

24. No Further Subdivision of Condominiums. Applicant shall cause there to be included in the Master Deed creating the condominium for the Project a requirement that there shall be no further units created within the condominium other than the eighteen (18) residential units allowed through this special permit. Prior to the issuance of the first occupancy permit for the first unit of the Project, the City Solicitor shall verify in writing to the Building Commissioner that the Master Deed creating the condominium for the Project has been recorded, that said requirement is contained in the Master Deed, and that the Master Deed contains a provision that said Master Deed requirement prohibiting the creation of further units may not be eliminated.

27. Prior Decisions. The Project may consist of up to eighteen (18) residential units, notwithstanding anything in the Original Special Permit or the First Amendment to the contrary.

28. Recording. This Second Amendment to the Original Special Permit and the First Amendment shall be recorded at the Middlesex South District Registry of Deeds in accordance with the provisions of M.G.L. Chapter 40A, § 11. The Applicant (110 Pleasant LLC, 26 Elderwood Drive, Stoughton, MA 02072), including its successors and assigns, shall be responsible for recording, at its expense, this Second Amendment, and shall present evidence of said recording to the City Solicitor's office, which thereupon shall duly forward said recording evidence to the Building Commissioner.

Yea: 10 – Nay: 0 – Abstain: 1

Yea: Delano, Doucette, Elder, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey

Abstain: Tunnera

ORDERED: That the sum of \$6,350,000 (six million three hundred fifty thousand dollars) be and is hereby appropriated for street construction.

That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$6,350,000.

Pursuant to the provisions of Chapter 44, Section 7 (5) of the Massachusetts General Laws, as amended, and the guidelines established by the Division of Local Services within the Massachusetts Department of Revenue, each issue of such bonds or notes shall be payable in not more than fifteen (15) years from its date of issue.

APPROVED; adopted.

Councilor Irish recused.

Yea: 10 – Nay: 0 – Abstain: 1

Yea – Delano, Doucette, Elder, Tunnera, Clancy, Landers, Juairé, Oram, Ossing, & Robey

Abstained: Irish

ORDERED: That the sum of \$650,000 (six hundred fifty thousand dollars) be and is hereby appropriated for water meters.

That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$650,000.

Pursuant to the provisions of Chapter 44, Section 8 (7A) of the Massachusetts General Laws as amended, each issue of such bonds or notes shall be payable in not more than ten (10) years from its date of issue.

APPROVED; adopted.

Yea: 11 – Nay: 0

Yea – Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey

ORDERED: That the sum of \$350,000 (three hundred fifty thousand dollars) be and is hereby appropriated for sewer construction.

That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$350,000.

Pursuant to the provisions of Chapter 44, Section 8 (15) of the Massachusetts General Laws as amended, each issue of such bonds or notes shall be payable in not more than thirty (30) years from its date of issue.

APPROVED; adopted.

Yea: 11 – Nay: 0

Yea – Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey

ORDERED: That the sum of \$3,350,000 (three million three hundred fifty thousand dollars) be and is hereby appropriated for water main construction.

That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to issue bonds or notes of the City of Marlborough in the amount of \$3,350,000.

Pursuant to the provisions of Chapter 44, Section 8 (5) of the Massachusetts General Laws as amended, each issue of such bonds or notes shall be payable in not more than forty (40) years from its date of issue.

APPROVED; adopted.

Yea: 11 – Nay: 0

Yea – Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing, & Robey

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:27 PM.